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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROBERTO CHAIDEZ, Plaintiff and Appellant, v. STATE OF CALIFORNIA, et al., Defendants and Respondents.	D052032 (Super. Ct. No. 37-2007-00069122-CU-NP-CTL)

APPEALS from judgments of the Superior Court of San Diego County, James B. Jennings, Judge. (Retired judge of the Santa Barbara Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.) Affirmed.

We review three judgments of dismissal after demurrers, regarding the "civilian citizen complaint liability claims for damages incurred" filed June 25, 2007 in superior court by plaintiff and appellant Roberto Chaidez (Appellant), representing himself. In his pleading (the complaint), Appellant seeks relief against three sets of defendants and respondents on several tort and civil rights-type theories, arising out of the events at

certain posttrial proceedings that took place in the course of Appellant's 2006 jury trial, in which he was convicted of burglary and other related charges. (Pen. Code,[1] §§ 459, 460, 496, subd. (a); Veh. Code, § 10851, subd. (a).) In those proceedings, Appellant's appointed counsel brought a new trial motion on his behalf, but over his objection. In any case, the motion was denied and sentence imposed, including terms for prior serious felony convictions.[2] Appellant's civil complaint now alleges that his due process rights were violated in several respects at those new trial proceedings, and that fraud or conspiracies took place. (See 42 U.S.C. § 1983.)

In his complaint, Appellant has named as defendants several official participants in those 2006 posttrial proceedings: (1) the Superior Court of San Diego County and its trial judge, Melinda J. Lasater ["Court Respondents"]; (2) San Diego County District Attorney Bonnie Dumanis and the trial deputy, Janice DeLeon ["D.A. Respondents"]; (3) Keith H. Rutman, the criminal defense attorney who formerly represented Appellant in the new trial motion (Rutman) (sometimes collectively Respondents).

In response to the complaint, each set of Respondents separately brought demurrers on various grounds, and the matters were set for hearing. (Code Civ. Proc., § 430.10.) The court issued a tentative ruling on October 12, 2007, and then heard

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1 All further statutory references are to the Penal Code unless otherwise stated.

2 After the trial court denied the new trial motion, it sentenced Appellant to 60 years to life. He appealed and we affirmed. (*People v. Chaidez* (Sept. 10, 2008, D049656) [nonpub. opn.], review den. Dec. 23, 2008 (our prior opn.).) Judicial notice is proper of that opinion and ruling. (Evid. Code, §§ 452, 459.)

argument from counsel on October 16, 2007, with Appellant (a California prison inmate) appearing telephonically.

The trial court issued a final ruling that sustained without leave to amend each set of demurrers, on specified grounds. The orders reflected that the complaint was dismissed and judgments were entered accordingly. Appellant filed four notices of appeal.

Appellant now contends that in hearing the demurrers, the superior court erred by mischaracterizing the nature of the actions complained of and the relief sought, and the court abused its discretion in failing to allow him leave to amend to more fully allege his theories. Since Appellant's opposition was filed late due to problems with the prison legal mail system, he claims amendment should have been allowed.[3]

After reviewing the record, we agree with the trial court that the complaint fails to state any cognizable claims for relief against any of the Respondents. The allegations of the complaint are confined to the manner in which the courtroom proceedings in the criminal case were carried out during the posttrial phase, which was before the final judgment and sentence were imposed, and the trial court had the jurisdiction to hear the various objections raised and rule upon them. The appeal in the criminal case was the proper place to bring such challenges, and that matter has been finally resolved.

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[3] Appellant also argues that he has been prejudiced by not being able to pay for a reporter's transcript on appeal (although we note he has withdrawn his original record designation of the reporter's transcript of the demurrer hearing). The record has been augmented to include documentation of Appellant's problems with the prison legal mail system and his efforts to obtain a reporter's transcript free of cost.

Therefore, the complaint is barred by the rules of *Heck v. Humphrey* (1994) 512 U.S. 477 (*Heck*) and *Yount v. Sacramento* (2008) 43 Cal.4th 885 (*Yount*) [civil rights or tort complaints barred if any judgment in the plaintiff's favor would necessarily imply the invalidity of an underlying final criminal judgment].

Moreover, the doctrines of judicial and prosecutorial immunity apply to these allegations of errors or official misconduct within the courtroom setting. (*Frost v. Geenaert* (1988) 200 Cal.App.3d 1104, 1107-1108 (*Frost*); Gov. Code, §§ 815.2, subd. (b), 821.6.)

The separate legal malpractice claims against Rutman fail because there is no claim of Appellant's ability to show actual innocence of the criminal charges leading to the convictions, as part of his causation allegations. (*Wiley v. City of San Diego* (1998) 19 Cal.4th 532 (*Wiley*).) Rather, in his complaint, Appellant expressly states that he accepts the jury's decision in the criminal matter. Since no possibility of amendment to cure any of these fatal defects was persuasively presented or evident upon the record, the demurrers were properly sustained without leave to amend and the dismissals were appropriate.

FACTUAL AND PROCEDURAL BACKGROUND

A. Previous Criminal Case

In February 2006, in Appellant's criminal case, a jury found him guilty of residential burglary of two inhabited dwelling homes, of receiving stolen property, and of unlawfully taking and driving a vehicle. Examination of our prior opinion arising from that appeal shows that the jury found true special allegations that he had suffered two

prior serious felony convictions (§ 667, subd. (a)(1)), as well as other allegations of strike priors and prior prison terms (§§ 667.5, subd. (b), 668).[4] The jury verdicts also included true findings on separate allegations of previous convictions of a 1982 prison stabbing conviction (§ 4502) and receiving stolen property (§ 496), as we next explain.

The serious felonies that were found true by the jury included burglary charges from 1981 and 1989 in Sacramento Superior Court (case nos. 60753 & 88721). The 1989 burglary charges originally stemmed from two companion cases, numbers 88720 and 88721. It is not disputed here that the Sacramento court in rendering the 1989 sentence mixed up these two case numbers, and in 1998, Appellant's petition was granted by the court in Sacramento to clarify and correct the court records to show that a five-year enhancement for the 1981 prior serious felony conviction was actually imposed in case no. 88721. That is, it did not go to trial in case no. 88720 and should not have been imposed there, but it was correct in case no. 88721, as recognized in 1998.

Before the trial court sentenced Appellant in the criminal matter, the court granted his motion to remove his trial counsel, Joe Cox, in March 2006. (*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).) Apparently Appellant believed that earlier, he had agreed to be represented at trial by Mr. Cox, instead of representing himself, in return for

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4 Section 667, subdivision (a)(1) requires that "any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively."

a promise from the trial judge to allow Appellant to call four expert witnesses. However, no such expert witnesses were called at trial.

In April 2006, new counsel for Appellant, Respondent Rutman, was appointed in the criminal matter by a different judge, Judge Brainard. Rutman visited Appellant at the jail and discussed preparing a new trial motion on grounds of ineffective assistance of trial counsel. Appellant disagreed with Rutman, who he thought was proposing to file a *Wende* or "dump" brief, and Appellant attempted to fire Rutman. Appellant brought a *Marsden* motion to remove Rutman, which was denied. Eventually, Rutman filed the new trial motion and included a summary of a 113-page handwritten document that Appellant had prepared on his own behalf, that was given to Rutman to present to the court to supplement what Rutman had prepared. However, Rutman did not supply that document to the court because he believed it lacked any legal merit, and it does not appear to be in the record.

Ultimately, the new trial motion was denied and Appellant was sentenced to a term of 60 years to life. In addition to sentencing on the recent convictions, the trial court imposed two five-year enhancements under section 667, subdivision (a)(1) for Sacramento cases nos. 60753 and 88721. Additionally, three prior prison term allegations were found true. (§ 667.5, subd. (b).)

Appellant filed his appeal of the convictions and sentence. (Prior opn., D049656.) As shown in our prior opinion resolving that appeal, of which we take judicial notice, he brought the following claims of error: "(1) his convictions on counts 4 and 5 [burglary/car theft] were not supported by sufficient evidence; (2) the trial court

erroneously admitted into evidence proof of his prior convictions; and, alternatively, his trial counsel provided ineffective assistance by failing to object to that evidence; (3) the trial court erroneously denied his *Pitchess* motion; (4) he was denied his constitutional right to testify; and (5) the prosecutor committed misconduct." (Evid. Code, §§ 452, 459.) After studying the record in light of those claims, we affirmed the judgment in September 2008. In December 2008, the California Supreme Court denied review.

B. Current Complaint

While his appeal of the criminal judgment was pending, Appellant filed the current civil complaint. For purposes of analyzing the demurrer, the courts will accept as true the facts alleged in the complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We describe them more fully in the discussion portion of this opinion, *post*. In general, the claims are based on alleged misconduct by the various Respondents who participated in their official capacities in the posttrial proceedings in the criminal case, relating to the manner in which Appellant's new trial motion was litigated. He claims that several agreements that were reached during trial were breached, to his damage. Those agreements are described in several ways, as dealing with either an agreement to allow expert witnesses to be presented in exchange for the appointment of his former trial counsel, or to allow him self-representation, or to have his handwritten new trial materials considered in addition to those of his replacement attorney, or not to introduce certain prior convictions into evidence.

With respect to the prior convictions, he believes the prison stabbing allegation was not factually true, based on when that prison was constructed. He also raises the

issue of confusion at the criminal trial and new trial motion about whether the 1989 prior serious felony conviction in the two Sacramento cases was erroneously recorded in the wrong file, and whether the judge in 1998 had the ability to correct it.[5]

Appellant also refers to several torts, including conspiracy, fraud and/or defamation, that allegedly occurred in those respects during the conduct of the posttrial proceedings. However, he states that he is accepting the jury verdict that was returned before the new trial proceedings began.

Additionally, Appellant alleges he suffered unlawful discrimination in court on account of his race/national origin (Mexican). He seeks multimillion dollar damages "and every other sort" of relief possible, such as having his rights restored and having government employees held accountable for any criminal conduct.

Because the court system was a named defendant, the matter was assigned to a retired judge from out of county, to avoid any appearance of bias.

C. Demurrers and Rulings

Each set of Respondents brought demurrers to the complaint on theories that will be described more fully in the discussion portion of this opinion. Grounds of demurrer under Code of Civil Procedure section 430.10 include: "(a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading;" "(e) The pleading does not

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[5] In our prior opinion, we discussed the effect of a stipulation to present evidence of the prior burglary convictions, in response to concerns about their probative versus prejudicial effect under Evidence Code section 1101, subdivision (b). No prejudicial error was found in allowing this evidence. Appellant is now raising different concerns about the prior convictions in this civil matter.

state facts sufficient to constitute a cause of action;" and "(f) The pleading is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible."

In general, the Court Respondents and D.A. Respondents contended that the trial court lacked jurisdiction to adjudicate the current matter due to governmental and judicial immunity, that prosecutorial immunity applied, and that the overall effect of the complaint was an impermissible collateral challenge of the underlying criminal conviction. The posttrial proceedings had taken place in the criminal matter and could not support this separate civil complaint. (*Heck, supra*, 512 U.S. 477, 486-490; *Yount, supra*, 43 Cal.4th 885, 893-895, 902.) The D.A. Respondents raised additional arguments regarding noncompliance with the claims and filing requirements of the California Tort Claims Act (Gov. Code, § 810 et seq.). Judicial notice was requested of the underlying criminal court proceedings. (Evid. Code, §§ 452, 459.)

Respondent Rutman also relied on the *Heck, supra*, 512 U.S. 477, line of authority, and additionally cited cases that require a criminal defendant who is alleging malpractice against a former criminal defense attorney to prove factual innocence of the charges of which he was convicted, as part of the causation showing. (*Wiley, supra*, 19 Cal.4th 532, 535, 542-545.) Rutman also supplied judicial notice materials from the criminal matter, including 16 exhibits that documented that trial and new trial motion, and showed how the 1989 serious felony prior conviction record was later corrected by the 1998 ruling.

Appellant filed two responses to the demurrers. First, on September 19, 2007, he sought an emergency stay of the matter because he was unable to prepare a response due

to problems at the prison involving his discipline and transfer. Next, on October 9, 2007, he filed a change of address form and an objection to the hearing and a request for the record, explaining his position that Respondent Rutman had been fired and could not have properly proceeded in the new trial matter in the underlying criminal case. This opposition to the demurrers was late under court rules, but it was actually filed three days before the trial court issued its tentative ruling, which was faxed to all parties.

In its tentative telephonic ruling, the trial court originally sustained all the demurrers, and allowed leave to amend only as to Respondent Rutman. Four days later, after oral argument, in which Appellant appeared by telephone, the trial court sustained the three sets of demurrers in their entirety, without leave to amend. The ruling stated different grounds for each Respondent, as will be explained, *post*. Judgments of dismissal were entered and Appellant filed four notices of appeal.[6]

The matter was briefed and oral argument was deemed waived. However, due to confusion in the prison legal mail system about whether Appellant had timely received the appropriate mail from this court, we received and considered his seven-page supplemental letter brief as a substitute for oral argument. He was also advised that we were unable to appoint counsel for him in the civil matter.

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6 Appellant's four notices of appeal were filed in response to the various orders of dismissal and judgments filed. We may properly construe the appeals to be taken from the appealable judgments of dismissal, rather than any nonappealable orders. (*Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1353, fn. 5 (*Bame*).) Contrary to a contention by the D.A. Respondents, there is no lack of jurisdiction to review these judgments.

DISCUSSION

I

STANDARD OF REVIEW AND COMMON ISSUES PRESENTED

A demurrer tests the legal sufficiency of the complaint. When the trial court has sustained a demurrer without leave to amend, the appellate court will assume as true all facts that may be implied or inferred from those expressly alleged, to determine whether they state a cause of action on any available legal theory. (*Blank v. Kirwan, supra,* 39 Cal.3d 311, 318.) Although we accept as true all facts properly pled in the complaint, we do not assume the truth of "contentions, deductions or conclusions of law." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 (*Aubry*).) We also consider all properly judicially noticed matters. (*Bame, supra,* 86 Cal.App.4th at p. 1363; Evid. Code, §§ 452, 459.)

The trial court exercises its discretion in deciding whether to grant leave to amend. (*Aubry*, *supra*, 2 Cal.4th at p. 967.) Absent a reasonable possibility that any pleading defects can be cured by amendment, the trial court does not abuse its discretion by denying leave to amend. (*Ibid*.) Appellant carries the burden of proving an amendment would cure any defect. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

On appeal, several common issues, as well as three sets of subissues, are presented. We first address the issues pertaining to all Respondents, then turn to their specific arguments. As a threshold matter, we observe that this record is complete and adequate for review, even though no reporter's transcript of the hearing was designated or prepared, despite the efforts of Appellant as shown in the augmentation materials.

Demurrers address the adequacy of the allegations made upon the face of the pleadings, dealing solely with issues of law, and any arguments made to the trial court need not be presented separately to us, and we do not review its reasoning process. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19.) Rather, we review the demurrer rulings on a de novo basis. (*Bame*, *supra*, 86 Cal.App.4th 1346, 1363.)

We next repeat our observation from our prior opinion regarding the nature of our review of the issues, in light of Appellant's representation of himself in this court:

> "We reject Chaidez's contention that because he was self-represented, the trial court should have overlooked his failure to comply with [procedural] requirements . . . . A defendant who chooses to serve as his own attorney ' "is not entitled either to privileges and indulgences not accorded attorneys or to privileges and indulgences not accorded defendants who are represented by counsel." ' [Citations.] 'But neither is he entitled to *less* consideration than such persons.' [Citation.] The trial court, in requiring Chaidez to comply with the applicable statutes, treated him no differently than it would a party represented by an attorney."

With those standards in mind, we observe that we could have stricken certain improper material in the opening brief, such as threats, but instead have chosen to disregard it and to address the merits in an effort to afford substantial justice in these proceedings. (See *Saks v. Parilla, Hubbard & Militzok* (1998) 67 Cal.App.4th 565, 567, fn. 3; Cal. Rules of Court, rule 8.204(e).) Likewise, we have encountered some difficulty in analyzing what causes of action are alleged in the 63-page complaint, which does not separately designate them, but rather intermingles generalized allegations of injury and damage to the personal, financial, and constitutional interests of Appellant. We next

discuss the nature of the rights sued upon, with respect to the Respondents individually. (See *McLeod v. Vista Unified School District* (2008) 158 Cal.App.4th 1156, 1165.)

II

MERITS OF APPEAL

A. Nature of Civil Complaint and Heck Doctrine

At the outset, it is necessary to outline a basic principle of finality of judgments, to assist us in analyzing the scope of the issues that this civil complaint may legitimately raise. Appellant seems to argue that the new trial proceedings, after his criminal jury trial, were so separate and apart from the underlying convictions of the charges, that they should be exempt from the effect of the *Heck* line of authority. In other words, his complaint admits that he is accepting the jury's verdict on the criminal charges, but through this complaint, he continues to challenge the manner in which the new trial motion was litigated by defense counsel and the other participants. Likewise, in his supplemental letter brief, he argues the disputes he raised in the new trial proceedings about the validity of his prior convictions should be considered to be separate from the jury convictions on the criminal charges.

It is well established under *Heck, supra*, 512 U.S. at page 487, and cases following, that " 'a state prisoner's claim for damages is not cognizable under 42 [United States Code section] 1983 if "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence," unless the prisoner can demonstrate that the conviction or sentence has previously been invalidated.' [Citations.]" (*Yount, supra*, 43 Cal.4th 885, 893.) In that case, our Supreme Court used the reasoning of *Heck*, which

prohibited a federal cause of action that effectively challenged the validity of a state conviction, to separately conclude that state tort claims "arising from the same alleged misconduct" should also be barred, where the underlying criminal conviction remains intact. Our Supreme Court reasoned that "Section 1983 ' "creates a species of tort liability" ' [citation] and has been described as ' "the federal counterpart of state battery or wrongful death actions." ' " (*Yount, supra,* 43 Cal.4th 885, 902.) Similarly, Appellant is attempting to allege state tort claims arising out of the alleged misconduct at the criminal trial that occurred after the jury verdict and before sentence was imposed on his criminal convictions, during a different phase of trial.

The basic rule in both civil and criminal matters is that a judgment is not final until there is no pending motion for new trial or appeal. (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 7, pp. 551-552; 6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Crim. Appeals, § 49, pp. 294-295.) As long as this underlying new trial motion was being litigated in the criminal matter, the trial court retained jurisdiction to resolve all issues about the propriety of the legal representation that Appellant was receiving, including the *Marsden* motions and his efforts to separately represent himself during posttrial proceedings by filing his own documents and asserting his own theories. (See *Faretta v. California* (1975) 422 U.S. 806.) Accordingly, there is no proper legal analysis that will support a claim that the new trial phase of his criminal trial gave rise to independent causes of action that are separated from the proceedings that included the jury verdict and the judgment eventually entered upon it. (See *Heck, supra,* 512 U.S. at p. 487; *Yount, supra*, 43 Cal.4th at p. 902.)

Appellant also attempts to challenge the validity of the 1989 prior convictions, as corrected in 1998, and he apparently seeks to relitigate them in this civil complaint under fraud or similar theories, by treating them as separate from the jury verdict in the criminal trial. The factual background of those 1989 burglary charges shows two companion cases were tried at that time, nos. 88720 and 88721. As already mentioned, the court in rendering the 1989 sentence mixed up these two case numbers, and in 1998, Appellant's petition was granted by the court in Sacramento to clarify and correct the court records to show that the five-year enhancement for the prior serious felony conviction was actually imposed in case no. 88721. (§ 667, subd. (a)(1).) Thus, it did not go to trial in case no. 88720 and should not have been imposed there, but it was later correctly made part of the sentence in case no. 88721. Therefore, in Appellant's underlying criminal case, there were two five-year serious felony enhancements imposed under section 667, subdivision (a)(1), for case nos. 60753 and 88721. (§ 667.5, subd. (c)(21).) Other prior conviction allegations were found true, including a prison stabbing conviction (§ 4502) and receiving stolen property in case no. 88720. Prior prison term findings were also made. (§ 667.5, subd. (b).) That judgment is final. (Prior opn., D049656.)

Because the February-October progress of the criminal matter must be viewed as one continuous proceeding leading up to an appealable sentence and judgment, and that judgment is now final, we next examine the validity of Appellant's civil claims against that factual backdrop. He has not pled his case in terms of federal civil rights theories under 42 United States Code section 1983 (addressing the injurious deprivation of any constitutional rights, privileges, or immunities, under color of law). Instead, he combines

allegations of fraud, conspiracy, breach of agreements, denial of due process, and racial discrimination. Keeping in mind the factual context of his complaint and his different theories, we must consider whether his requests for relief are integrally related to the validity of his criminal conviction, or whether any separate civil primary rights are actually asserted (e.g., to be free of tortious conduct that is unrelated to the courtroom setting).

B. Complaint Theories versus Court Respondents; Analysis

In the posttrial proceedings in the criminal matter, Appellant alleges that court misconduct occurred in several ways: First, that Judge Lasater participated in a scheme to violate Appellant's due process rights by breaking a deal made during the trial or the posttrial proceedings, against Appellant's wishes (dealing with his right of self-representation, or his right to present expert witnesses, or his right to present correct records of his prior convictions). Second, he claims the court clerk used fabricated documents about the prior conviction to process the case. Third, he believes the court system as a whole employs criminals and persons who unlawfully discriminate against Mexicans. In his opening brief, Appellant says that he might no longer seek damages for these harms, but instead he wants equitable relief of some kind, such as specific performance of promises made to him.

In their demurrer, the Court Respondents defended against these accusations in several ways. They point out that this civil complaint should not be used to effectively allow one superior court judge (the retired judge brought in from out of county to hear the matter) to review the rulings of another judge (Judge Lasater in the underlying criminal

matter). This point is well taken. (See *In re Alberto* (2002) 102 Cal.App.4th 421, 427-430 [one trial judge normally cannot reconsider an order made by another].) The principles of *Heck, supra*, 512 U.S. 477 and *Yount, supra*, 43 Cal.4th 885 are relied on as barring this civil complaint, to the extent that it is intended to be a collateral attack on the criminal conviction and the new trial ruling. As explained above, we agree that these allegations fall within the bar of those authorities.

In addition to those arguments, the Court Respondents assert they are immune from liability for damages for acts carried out in their official capacities, on a number of theories. (Gov. Code, § 815.2, subd. (b); *Frost, supra*, 200 Cal.App.3d 1104, 1107-1108.) We agree that all these allegations are confined to occurrences within the courtroom proceedings, within the course of the criminal prosecution, and that judicial immunity accordingly protects the court system, the individual judge, and the court clerk from liability for damages. (*Mireles v. Waco* (1991) 502 U.S. 9, 9-14; *Duvall v. County of Kitsap* (9th Cir. 2001) 260 F.3d 1124, 1133-1134, 1144.)

To the extent that Appellant is seeking nonmonetary relief, other than damages, it is unclear what remedies are proposed, or under what authority. For example, this court does not have the power to administer the trial court system by reopening closed cases, nor to review personnel decisions. Although Appellant invokes the remedies of rescission, restitution, or reformation, under the facts alleged, he has not pled an enforceable contract to which such principles could apply. No realistic proposals to amend the complaint to allege any viable legal theories are presented in the briefs. Under Code of Civil Procedure section 430.10, it is a valid ground of demurrer, applicable here,

that "(f) The pleading is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." The order sustaining the demurrer and dismissing the complaint is correct as a matter of law.

C. Complaint Theories versus D.A. Respondents; Analysis

In the posttrial proceedings in the criminal matter, Appellant alleges that prosecutorial misconduct occurred in several ways. First, the trial deputy produced "false" papers to prove Appellant's prior convictions, and did this at the direction of the trial judge. Second, the trial deputy breached a deal that was reached to protect Appellant's rights (regarding proof of a prior conviction). This was allegedly a violation of the truth in evidence law. (Cal. Const., art. I, § 28.) The D.A. Respondents are generally alleged to have hired bad employees who acted in a criminal or racially discriminatory manner.

In their demurrer, the D.A. Respondents asserted the protection of Government Code section 821.6, providing that public employees are not liable for injuries caused by official prosecutions of judicial proceedings. Also, where employees are immune, the employer is likewise immune. (Gov. Code, § 815.2, subd. (b).) The courts do not impose direct civil liability upon public employers for the alleged hiring of bad employees. (See *deVillers v. San Diego* (2007) 156 Cal.App.4th 238, 252-256 ["a direct claim against a governmental entity asserting negligent hiring and supervision, when not grounded in the breach of a statutorily imposed duty owed by the entity to the injured party, may not be maintained"].) Because all these allegations revolve around the conduct of official duty in the courtroom by D.A. representatives, litigation privilege also

applies, and the complaint is barred by the above principles. (Civ. Code, § 47, subd. (b); *Silberg v. Anderson* (1990) 50 Cal.3d 205.)

Likewise, to the extent that Appellant is trying to undermine his otherwise final criminal conviction, based on the events within the posttrial litigation, his claims fail under the doctrines of *Heck*, *supra*, 512 U.S. 477 and *Yount*, *supra*, 43 Cal.4th 885. Under Code of Civil Procedure section 430.10, subdivision (a), the complaint is defective for lack of jurisdiction over the subjects of the causes of action alleged in the pleading. Additionally, Code of Civil Procedure section 430.10, subdivisions (e) and (f) apply: The pleading does not state sufficient facts to constitute its causes of action, and it is uncertain, ambiguous and unintelligible.

The D.A. Respondents further contend that as to the tort causes of action, there was no compliance with governmental tort claims presentation requirements. (Gov. Code, § 901, et seq.; § 911.2 necessitates that a claim for "injury to [a] person . . . shall be presented . . . not later than six months after the accrual of the cause of action.") Here, Appellant filed a government claim, which was rejected with a notice that he had six months to file a complaint. Appellant responded by filing a written "warning" that he would not "fall for these little lawyer tricks," and then his complaint was filed more than a year after the notice of rejection of claim was sent to him. We need not resolve this matter on a limitations basis, since the order sustaining the demurrer and dismissing the complaint is otherwise correct as a matter of law. It was not an abuse of discretion to determine that no realistic prospect of amendment existed.

D. Complaint Theories versus Respondent Rutman; Attorney Malpractice Analysis

Respondent Rutman mainly asserted as grounds of demurrer that the pleading is unintelligible, and to the extent it is based on the conduct of the new trial proceedings and seeks to attack the criminal convictions, it is barred by case law (*Heck, supra,* 512 U.S. 477; *Yount, supra*, 43 Cal.4th 885) and does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subds. (e), (f).) As outlined above in connection with the other Respondents, those arguments are meritorious when the complaint is read as a whole.

Consistent with our approach to the claims against the other Respondents, we again reject Appellant's theory that since Rutman had not represented him during the jury portion of the trial, some kind of new rights arose during the posttrial proceedings that could later be litigated, independent of the *Heck* doctrine. It does not make any difference that Rutman did not take over representation of Appellant until after the jury verdict and before sentence was imposed. At that point, no final judgment had yet been entered and the convictions were being challenged within the criminal matter itself.

During the posttrial proceedings, the trial judge denied the *Marsden* motion in which Appellant sought to remove Rutman from representing him, and Rutman therefore had the duty to proceed with the anticipated new trial challenge. Apparently, Appellant ran into trouble at the prison law library getting access to legal materials, and he alleges that the trial court instructed the clerk to give him paper so that he could write his own documents. In addition to his 113-page document that Appellant wanted to have

submitted to the court, he filed his own motions to set aside the verdict on September 10, 2006 and October 13, 2006.

In his new trial motion and points and authorities, Rutman set forth a summary of this 113-page document that Appellant wrote about the new trial request, and Rutman explained why, in his professional judgment, he did not want to submit it to the court. The record here shows that the trial judge in the criminal case was well aware that Appellant wanted to represent himself and that the documents filed by Appellant on his own behalf existed. However, the court also knew that Rutman was making a tactical decision for the defense in pursuing the motion, and Rutman had that authority as appointed counsel who had not been removed from representation. The same approach applies to Appellant's various problems with and challenges to the serious felony prior convictions and the other prior convictions. Disagreement with trial and posttrial tactics did not amount to a showing of inadequate representation by Rutman. (See *People v. Carter* (2005) 36 Cal.4th 1114, 1120.) The final judgment is not subject to collateral attack as pled.

If Appellant is separately claiming that Rutman misrepresented the circumstances of the prior serious felony convictions, or wrongfully disposed of evidence during the court proceedings, that theory is likewise barred by case law. (*Temple Community Hospital v. Superior Court* (1999) 20 Cal.4th 464, 466 [no tort cause of action may exist against a nonparty to a lawsuit who destroys or suppresses relevant evidence, due to the need for balancing the relevant public policies].)

Further, to the extent Appellant is claiming that legal malpractice occurred during the posttrial proceedings, such a theory cannot succeed without his showing of causation of harm; the former client is required to demonstrate he was factually innocent of the charges on which the convictions are based. There must be a "proximate causal connection between the breach and the resulting injury," and actual loss or damage that directly resulted from the attorney's negligence. (*Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194, 1999 (*Coscia*); *Wiley, supra,* 19 Cal.4th 532, 536, 547.) A plaintiff who alleges that his criminal defense attorney committed malpractice must plead and prove actual innocence, because otherwise, his "own criminal act remains the ultimate source of his predicament irrespective of counsel's subsequent negligence." (*Id.* at pp. 539-540.)

In this context, the Supreme Court has stated that the criminal justice system "provides adequate redress for any error or omission" by defense counsel, through an array of postconviction remedies. (*Wiley, supra,* 19 Cal.4th at p. 542.) The applicable public policies require that civil tort liability should not provide any remedy where there was no direct injury: " 'A person who is guilty need not be compensated for what happened to him as a result of his former attorney's negligence. There is no reason to compensate such a person, rewarding him indirectly for his crime.' [Citation.]" (*Id.* at pp. 543-544.) Appellant does not challenge the underlying criminal convictions, which are final.

Accordingly, these matters were properly handled in the underlying criminal court proceedings, and cannot be revisited here through these malpractice allegations, without the essential factual innocence showing by Appellant. Appellant has provided no

authority, and we have found none, to support any argument the actual innocence requirement in criminal malpractice actions should apply only when the former client is suing the original criminal trial counsel who addressed the jury. Regardless of any alleged negligence by Rutman at any stage of the proceedings, Appellant's own criminal acts remain the source of his predicament, so that he did not suffer a legally compensable injury from Rutman. (*Wiley*, *supra*, 19 Cal.4th at p. 540; *Coscia*, *supra*, 25 Cal.4th at p. 1201.)

Further, Appellant has not shown any reasonable possibility these defects can be cured by amendment. Thus, the court properly sustained each of these demurrers without leave to amend.

DISPOSITION

The judgments are affirmed. All parties are to bear their own costs on appeal.

HUFFMAN, Acting P. J.

WE CONCUR:

O'ROURKE, J.

AARON, J.